IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.313 OF 1992

The State of Maharashtra ...Appellant.

V/s

1. Thavardas Hotchand Khitani
Incharge of shop of M/s D.Khitani
& Co. 81/2, Mulund Colony,
Mulund (W), Bombay - 82.

2. Dharamdas Hotchand Khitani
Proprietor of M/s D. Khitani & Co.
81/2, Mulund Colony, Mulund (W),
Bombay - 82. ....Respondents.

CORAM: V.M.KANADE,J.
DATE: 14th January, 2005

ORAL JUDGMENT:

1. This appeal has been filed by the State against the Judgment and Order passed by the Additional Chief Metropolitan Magistrate 46th Court, Mazgaon, Bombay in Case No.382/S/1989. By the said Judgment and Order dated 6/3/1992, the Trial Court was pleased to acquit the accused of the offence punishable under section 7(1) read with section 2 (ia)(m) of section 16 of the Prevention of Food Adulteration Act.

2. Prosecution case is that the accused No.1 was the incharge of the shop of M/s D. Khitani & Co. at Mulund and accused No.2 is the Proprietor of the shop. It is the case of the prosecution that on 22/10/1987, the Food Inspector Shri N.A. Janugade visited the shop of the accused. The accused was selling plaint

Toffee in his shop which was seized. Some sample was taken of the said Toffee and. The said sample was sent to the Public Analyst on 22/12/1987 and the intimation was given to the Local Health Authority. A report was received on 28/12/1988 and as per the said report, the food articles fell below the prescribed standard. Accordingly sanction was obtained from the Competent Authority and the complaint was filed against the accused.

3. Prosecution has examined 7 witnesses. The learned Counsel appearing on behalf of the State has taken me through the Judgment and Order of the Trial Court and also evidence adduced by the prosecution. Out of 7 witnesses, P.W. 1 - Ravindra Shripad was working as a clerk in the Office of the Local Health Authority. This witness is examined primarily for the purpose of bringing on record documents such as Public Analyst Report and regarding sample being sent to the prescribed Authorities. P.W. 2 - Janugade is the Food Inspector. He has stated in his evidence that he purchased 900 grams of plain Toffee from the accused, made three parts of 300 grams each and put each part in three emty clean and dry plastic bags and each packet was wrapped in brown paper and labels were pased on each packet. P.W.2 in his evidence has

admitted that the containerd in which the samles were kept was not personally cleaned by him nor they were cleaned in his presence. He has further admitted that he was not aware as to when containers were cleaned. Thus from his evidence, it can be seen that there is non-compliance of the mandatory provisions of section 11(i)(c) of the Act. The Trial Court also has observed that there was non-compliance of the mandatory provisions of section 11(i)(c) of the Act.

4. Further, it can be seen from the evidence of P.W.2 that procedure which is prescribed under Rules 14 and 16 regarding drawing of samples and sealing them in a particular manner also apparently is not complied with. In the result, in my view, the Trial Court was justified in acquitting the accused. There is no reason to interfere with the order passed by the Trial Court. Appeal is accordingly dismissed.

V.M. KANADE, J.